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No. 88-

In the Supreme Court of the United States

October Term, 1988

E. LAURSENS MASKINFABRIK A/S,

Petitioner,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES (J.W. INTERNATIONAL CORPORATION, REAL PARTY IN INTEREST,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE COURT APPEAL STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION FIVE

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QUESTIONS PRESENTED

1. Whether a California court may assert personal jurisdiction over a Danish corporation which has no employees or agents in California; has no real property in California; maintains no office in California; has never been registered with the California Secretary of State to do business in the State of California, nor has it declared an agent for service of process in California; neither advertises in nor solicits business from the State of California and has no communication or contact with any resident of the State of California.

2. Whether the mere existence of a distributorship agreement which grants to an independent contractor a license to sell products in the United States and Canada constitutes purposeful availment of the benefits and protections of the law of the State of California, particularly where that agreement specifically provides that the rights and obligations of the parties to that agreement are to be governed by Danish law.

3. Whether sale of a product by a foreign manufacturer to an independent distributor "ex works" in Faaborg, Denmark, at which point the foreign manufacturer relinquishes all control over and interest in the sale and distribution of said product, is sufficient to support the assertion of jurisdiction over the foreign manufacturer arising out of a re-sale by the independent distributor in California.

4. Whether the sales activities of an independent distributor in California are sufficient to support the assertion of personal jurisdiction by California over a foreign national corporation where that corporation derives no profit from sales in California, and has no input into or control over the independent distributor's sales activities in California.

5. Whether a provision in the distributorship agreement that each party is to obtain its own liability insurance is sufficient to support a finding that the foreign national defendant has sufficient minimum contacts with the forum such that the assertion of personal jurisdiction does not offend traditional notions of fair play and substantial justice.

6. Whether the requirements of fair play and substantial justice will countenance assertion of jurisdiction by California over a Danish corporation, in an action brought in California by a South Carolina corporation, where the relevant transaction between those parties occurred wholly in Denmark and where the parties have agreed that Danish law would govern the rights and responsibilities between them arising out of those transactions.

7. Whether the Due Process Clause of the Fourteenth Amendment, as well as foreign policy considerations, mandate stricter scrutiny of the claimed contact and more extensive involvement by a foreign national defendant in a forum to justify a finding that assertion of jurisdiction by a state court is valid.

PARTIES TO THE PROCEEDINGS

All parties to the proceedings in the Court of Appeal of the State of California, Second Appellate District, Division Five, are named in the caption.

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PETITION FOR WRIT OF CERTIORARI TO THE COURT APPEAL STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION FIVE

E. LAURSENS MASKINFABRIK A/S (hereinafter referred to as "LAURSENS"), Petitioner herein, respectfully petitions the United States Supreme Court to issue a Writ of Certiorari to review the decision of the California Court of Appeal, Second Appeliate District, Division Five, entered in this case on April 24, 1989. Review thereof having been denied by the

California Supreme Court by its order of June 29, 1989.[1]

OPINIONS BELOW

This petition seeks review of the decision rendered herein by the California Court of Appeal, Second Appellate District, Division Five. (App. A1-A8.) That decision was subsequently the subject of a Petition for Review in the California Supreme Court. On June 29, 1989 the California Supreme Court denied the Petition for Review. (App. B1)

JURISDICTION

The decision of the California Court of Appeal, Second Appellate District, Division Five, issued April 24, 1989 affirmed the denial by the Superior Court of the State of California for the County of Los Angeles of a motion brought by LAURSENS to quash service of summons on a cross-complaint filed and served by J.W. International Corporation (hereinafter "INTERNATIONAL"). The order of the California Supreme Court denying the Petition for Review was entered June 29, 1989. The jurisdiction of this court is invoked under 28 USC section 1257(3).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

California Code of Civil Procedure section 410.10 states:

> "The court of this state may exercise jurisdiction on any basis not inconsistent with the

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[1]The opinion of the California Court of Appeal appears in Appendix A. The order of the California Supreme Court appears in Appendix B.

> Constitution of this state or of the United States."

The provision of the United States Constitution involved is the Due Process Clause of the Fourteenth Amendment:

> Section 1. . . nor shall any state deprive any person of life, liberty or property, without due process of law;. . .

STATEMENT OF THE CASE

A. FACTS

The parties do not dispute that LAURSENS is a Danish corporation whose employees all reside in Denmark. The Petitioner owns no real property in the United States, nor does it maintain any office in this country. Petitioner has no employees in the United States and neither does it solicit any business or advertise in the United States. At no time has LAURSENS ever been registered with any Secretary of State to do business in the United States and it has not declared an agent for service of process in the United States. INTERNATIONAL is a South Carolina corporation, with its principal place of business in Charleston, South Carolina.

LAURSENS manufactures machines in Denmark which are utilized in the process and reclamation of scrap and waste metal materials. The sole purchaser of LAURSENS' products for resale in the United States and Canada is INTERNATIONAL. All sales by LAURSENS to INTERNATIONAL have been, and are, "ex-works" at Petitioner's plant in Faaborg, Denmark. LAURSENS does not direct, dictate, nor need it approve or be notified of, the states to which the products will be resold by Real Party in Interest. Rather, INTERNATIONAL merely represents that it will use its best

efforts to sell the products in Canada and the United States. That agreement further provides that the distributor will establish its own price levels for sale of the products as well as establishing and maintaining its own workshop and service organization for the products it sells. At all times relevant herein, it was expressly understood and agreed between LAURSENS and INTERNATIONAL that they would not be considered joint venturers, partners or agents of each other. Rather, the relationship between the parties was considered that of independent contractors. Accordingly, the agreement also provided that each party would secure its own liability insurance to cover "any and all" liabilities in tort arising out of "activities" within the scope of the distribution agreement. It is further agreed that the relationship between the parties was to be governed by Danish law and that, as between the parties, "all warranties and guarantees which accompany the products are issued and placed thereon in the country of Denmark."

For approximately nineteen years, INTERNATIONAL has resold Petitioner's metal reclamation machines in the United States without any direction, involvement or assistance from Petitioner. During that time INTERNATIONAL claims to have sold nineteen machines in California. No evidence was presented that INTERNATIONAL reported to LAURSENS the sales of any machines in California. LAURSENS did not conduct any advertising in any state of the United States, including California. The Canada and United States distribution system was created and serviced solely by INTERNATIONAL. No advice, price quotes, recommendations or other assistance was given by or requested from LAURSENS regarding the use or operation of its machines anywhere in the United States. LAURSENS

has no ownership interest in INTERNATIONAL nor does INTERNATIONAL have any ownership interest in LAURSENS.

B. PROCEEDINGS

On July 18, 1985, Olvidio Alvarez filed his complaint seeking damages for injuries he allegedly sustained while operating a metal stripping machine. On April 22, 1986, a separate action was filed on behalf of the Workers Compensation carrier for Alvarez' employer seeking recovery of the benefits paid to Alvarez as a result of his injuries. The action filed by the Workers' Compensation carrier has never been served on Petitioner. On July 16, 1986, Real Party in Interest filed and served its answer to that complaint, concurrently with a cross-complaint asserting the legal theories of comparative negligence, equitable contribution and implied indemnity. Petitioner is named as a cross-defendant in that cross-complaint. On August 6, 1986, in accordance with the proceedings of the Hague Service Convention, Real Party in Interest mailed to the Danish Ministry of Justice, designated by the Convention as the entity responsible for service of foreign process within Denmark, a summons and a cross-complaint as well as a notice in acknowledgment of receipt with respect thereto. Petitioner was served with the summons on that cross-complaint by the Danish Ministry of Justice on August 20, 1986.

On June 3, 1987, Alvarez filed his first amended complaint in the consolidated actions, seeking damages under the same legal theories previously asserted. Neither the original complaint filed by Alvarez nor his first amended complaint have been served upon Petitioner. On June 12, 1986, the Workers Compensation action was ordered consolidated for all purposes with the

Alvarez action.

On September 28, 1988, LAURSENS timely filed its notice of special appearance and motion to dismiss for lack of personal jurisdiction. An opposition to said motion was filed by INTERNATIONAL. A hearing on LAURSENS' motion was had October 24, 1988, in Los Angeles County Superior Court, before the Honorable Eric Younger. The ruling on the motion issued by way of a minute order which appears in Appendix C, infra. (App. C1-C2) Therein, the court denied Petitioner's motion.

On November 7, 1988, a petition was filed by LAURSENS in the Second District of Appeal seeking extraordinary relief from the denial by the SUPERIOR COURT of its motion to quash service of summons on the cross-complaint. In its order dated November 17, 1988, Division Five of the Second District Court of Appeal denied LAURSENS' petition. A copy of said order appears in Appendix D, infra. (App. D1.) Thereafter, LAURSENS sought Review in the Supreme Court of the State of California. In an order filed January 5, 1989, the California Supreme Court granted LAURSENS' Petition for Review and transferred the matter to the Court of Appeal with directions that the Court issue an alternative writ for hearing before that court. In addition, the California Supreme Court issued a stay at the request of Petitioner pending final determination of this matter. A true and correct copy of that order appears in Appendix E, infra (App. E1). In accordance with the direction of the California Supreme Court, oral argument before Division Five took place on March 7, 1989. A copy of the alternative writ appears in Appendix F, infra (App. F1).

The opinion of the Court of Appeal, filed April 24,

1989, affirmed the order of the SUPERIOR COURT denying LAURSENS' motion to quash. In so doing, the Court of Appeal relied extensively upon the existence of the distributorship agreement between LAURSENS and INTERNATIONAL. The court held that ". . . it is the distributorship agreement that permits California to exercise jurisdiction over LAURSENS without offending due process, fair play or substantial justice." (App. A-4) Without explanation, the opinion proceeds to conclude that a distributorship agreement allowing a distributor to sell products within the "United States of America and Canada" "establishes the substantial connection between LAURSENS and California required by due process." (App. A-4)

Further, the Court of Appeal contorts the distribution agreement and in so doing finds, without foundation, that the agreement "shows LAURSENS 'intent or purpose to serve the market' in each of the states, including California, by 'marketing the product through a distributor who has agreed to serve as a sales agent' in California." (App. A-4-A-6) In addition, without reference to any evidence other than the distribution agreement, the Court of Appeal asserts that LAURSENS created "the distribution system" such that it directed the sale of its products so as to obtain the benefits and protections afforded by the laws of the State of California. (App. A-4-A-6) Finally, the opinion asserts that by virtue of the fact that the distribution agreement requires that each party obtain its own liability insurance, LAURSENS was, *a fortiori*, aware "that it could be haled into court" within the State of California and that since LAURSENS was to arrange for its own insurance coverage it was precluded from raising any argument that assertion of personal jurisdiction over it violated its Due Process rights. Nowhere in the opinion does

the Court of Appeal evaluate whether assertion of personal jurisdiction over LAURSENS is "reasonable," under the facts and circumstances of this case.

A petition for review of the Court of Appeal opinion was filed in the California Supreme Court on May 25, 1989. By way of its order, issued June 29, 1989, the California Supreme Court, denied the Petition for Review.

FINALITY OF DECISION

By virtue of the fact that the California Supreme Court has denied LAURSENS' Petition for Review in this matter, the decision of the California Court of Appeal, Second Appellate District, Division Five, is a final determination on the merits with respect to the personal jurisdiction issue for the purposes of 28 USC section 1257. *Faretta vs. California*, 422 US 806, 812 (1975); *Semi Press Steel Co. vs. Department of Revenue*, 419 US 560, 562 (1975).

REASONS FOR GRANTING THE WRIT

I.

HISTORY OF THE ISSUES HERE PRESENTED

Of course, this Court's leading case on personal jurisdiction is *International Shoe Company v. Washington* (1945) 326 U.S. 310. Therein it was held:

> [D]ue process requires only that in order to subject a defendant to a judgment in personum, if he be not present within the territory of the form, he has certain minimum contacts with it such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. *International Shoe Company v. Washington*, *supra*, 326 . . . p.316.

The restrictions announced in *International Shoe* are a function of the jurisdictional power of the state arising out of the territorial limitations on the power of each state. Those restrictions are not merely protection against inconvenient litigation. As this court reiterated in the case of *Worldwide Volkswagen Corp. v. Woodson* (1980), 444 U.S. 277, 294-295:

> "Even if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another state; even if the forum state has a strong interest in applying its laws of controversy; even if the forum state is the most convenient location for litigation, the due process clause, acting as an instrument of interstate federalism, may sometimes act to divest the state of its power to render a valid judgment. (Citing *Hanson v. Denckla* (1958) 357 U.S. 235, 251.)

In *Hanson v. Denckla*, *supra*, this Court set the outer limits of "minimum contacts" jurisdiction and emphasized that it is the *foreign defendant's purposeful activities in the forum*, not the plaintiff's, or here the cross-complainant's, which justify the exercise of jurisdiction. The Court further declared:

> "The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum state. The application of that rule will vary with the quality and nature of the defendant's activity, but *it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state*, thus envoking the benefits and

protections of its laws." *Id.* at p.253.
(Emphasis added)

Thereafter, in *Worldwide Volkswagen*, *supra*, this Court again discussed the purposeful activity requirement and emphasized that mere foreseeability that a manufacturer's product may ultimately arrive in the forum state does not constitute purposeful activity by the manufacturer in that state. The Court observed: "Those restrictions are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective states." *Id.* 444 U.S. p.294.

Similarly, in *Burger King Corporation v. Rudzewicz* (1985) 471 U.S. 462, this Court again had an opportunity to further define the nature and extent of the "minimum contacts" necessary to support the exercise of personal jurisdiction over an out-of-state defendant. There, a Florida corporation brought suit in a Florida court for a breach of a franchise agreement against a Michigan defendant. The agreement was executed in Florida and provided that the relationship was to be governed by Florida law. *Id.* at pp. 479-483. The evidence established a long term, substantial relationship between the defendant and Florida, as well as the fact that the defendant previously received notice from contract documents and from regular business contacts with Florida such that it was clear he was subject to suit in Florida. *Id.*, 471 U.S. at pp.479-480. Such evidence was considered by this Court sufficient to satisfy the "purposeful availment" component of the Due Process clause. In *Burger King* this court held:

> "This 'purposeful availment' requirement insures that a defendant will not be haled into a jurisdiction solely as a result of a 'random',

> 'fortuitous incident', or 'attenuated' context [citations], or the 'unilateral activity of another party or a third person,'[citations]. Jurisdiction is proper, however, where the contacts proximately result from actions by the defendant *himself* that create a 'substantial connection' with the forum state [citations]. Thus, where the defendant '*deliberately*' has engaged in *significant activities within the state, [citation], has created 'continuing obligations' between himself and residents of the forum* [citation], he manifestly has availed himself of the privilege of conducting business there, and because his activities are shielded by 'the benefits and protections' of the forum's law, it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well.
>
> *Id.*, 471 U.S. at p. 475. (Emphasis added)

Until recently this court had occasion to address Due Process challenges by foreign companies to a state court's jurisdiction in but two cases: *Perkins v. Benguet Consol Mining Co.* (1952) 342 U.S. 437 and *Helicopteros Nacionales de Columbia v. Hall* (1984) 466 U.S. 408. In each of those cases, the court considered whether the defendant's activities in the forum, which were unrelated to the incidents there in question, were continuous and systematic so as to support a finding of general jurisdiction. *Perkins*, *supra*, 314 U.S. at pp. 445-447; *Helicopteros*, *supra*, 466 U.S. at pp. 410-417. Then in 1987 this Court reviewed the decision by the California Supreme Court to assert personal jurisdiction over a foreign national defendant in *Asahi v. Superior Court* (1987) 107 S.Ct. 1026. *Asahi* involved a products liability action arising from a motorcycle accident in

California. The cause of the accident was a rear tire blowout. The rider of the motorcycle sued, among others, Cheng Shin Rubber Industrial Co., Ltd. The Taiwanese manufacturer that had produced the motorcycle inner tube and had made 20% of its total United States sales in California. Cheng Shin in turn filed a cross-complaint seeking indemnity from Asahi, the manufacturer of the tube's valve assembly. Asahi, a Japanese corporation, sold 1,350,000 valve assemblies to Cheng Shin in the period from 1978 to 1982. In addition, during that time Asahi valve assemblies were incorporated into the tubes of numerous other manufacturers selling their products in California. Asahi itself, however, had no offices, property or agents in California and neither solicited business or made any direct sales in that state. As here, the only claim there addressed was an indemnity cross-action between two non-forum residents.

Justice O'Connor, Chief Justice Rehnquist and Justices Powell and Scalia opined that Asahi's position was analogous to that of the defendant in *Worldwide Volkswagen*. Those Justices held that mere "awareness that the stream of commerce may or will sweep the product into the forum state does not convert the mere act of placing the product into the stream into an act purposely directed toward the forum state. *Id.* at p. 1033. Instead, "[t]he 'substantial connection' between the defendant and the forum state necessary for a finding of minimum contacts must come about by an action of the defendant purposefully directed toward the forum state." *Id.* Because Cheng Shin, and not Asahi itself, had made the choice to send Asahi's products to California, there was no purposeful availment by Asahi and the assertion of jurisdiction over it by California was considered unconstitutional. This conclusion was fortified by the fact that Asahi neither advertised,

solicited business nor maintained agents or offices in California, and was neither responsible for nor aware of the distribution system that brought its valves to California.

In a separate opinion authorized by Justice Brennan and joined by Justices White, Marshall and Blackmun it was urged that the purposeful availment requirement is satisfied once a manufacturer inserts its products into the stream of commerce *with knowledge that the product will eventually be used in the forum state*. Justice Stevens found it unnecessary to reach the purposeful availment issue based upon his conclusion that the assertion of personal jurisdiction over Asahi under the circumstances presented would have been unfair. As an aside, Justice Stevens stated that insofar as purposeful availment was concerned, he would look to "the volume, the value and the hazardous character of the components" at issue. *Id.* at p. 1038. Justice Stevens suggested "in most circumstances" he would have found jurisdiction over a manufacturer such as Asahi constitutionally permissible since the evidence presented indicated "deliveries of over 100,000 units annually over a period of several years." *Id.*

Nonetheless, this court in *Asahi* unanimously held that the Due Process Clause prevented California from asserting personal jurisdiction. Part II-B of Justice O'Connor's opinion was supported by all justices, except Justice Scalia. In that part of the opinion, this Court held that the assertion of jurisdiction would offend traditional notions of fair play and substantial justice and therefore was unconstitutional. The premise of the Court's conclusion in this regard were the factors it has consistently addressed and applied in all earlier personal jurisdiction cases:

> "The burden on the defendant, the interests of the foreign state, . . . the plaintiff's interest in obtaining relief, . . . 'the interstate judicial systems interest in obtaining the most efficient resolution of controversy; and the shared interest of the several states in furthering fundamental substantive social policies.' "
> *Id.* at p. 1034.

Two factors derived from the international scope of the jurisdictional problem were emphasized in the Court's opinion: "The unique burdens placed upon one who must defend oneself in a foreign legal system" and the potential implications for United States foreign policy. In addition, this Court emphasized the fact that since no California resident was a party to the cross-claim, the interest of that state in the resolution of that claim was "slight" and thus insufficient to justify the imposition of "serious burdens" on the foreign national defendant.

The California Court of Appeal in this case impermissibly extended jurisdiction over a foreign national corporation premised solely upon the acts of a wholly independent third party. The opinion refers to no evidence which would demonstrate an affirmative act by LAURSENS to purposely avail itself of the California market or the protection of California law. In fact, to the contrary, the agreement between the parties specifically provides that petitioner could rely upon the assurance that Danish law would control the rights and liabilities between them. Moreover, the Court of Appeal opinion imposes California jurisdiction upon a Danish corporation, even in the absence of evidence reflecting knowledge on the part of LAURSENS that its products were being resold in California. Finally, its holding entirely fails to analyze whether, assuming arguendo,

minimum contacts by Petitioner in California could validly be found, the assertion of jurisdiction under the facts presented would be consistent with "traditional notions of fair play and substantial justice".

II.

THE OPINION OF THE COURT OF APPEAL CONTRADICTS WELL-SETTLED CASE LAW ANALYZING THE PROPRIETY OF IMPOSING PERSONAL JURISDICTION OVER FOREIGN CORPORATIONS.

A. The Opinion Of The Court of Appeal Fails To Apply The Requisite "Strict Scrutiny" For Extending State Jurisdiction Into The International Context.

The decision of the California Court of Appeal extends principles of personal jurisdiction far beyond those previously enunciated in any decision by this Court. By asserting jurisdiction, California is claiming the right to make a binding determination of the legal quality of a foreign defendant's conduct abroad. The issue of what constitutes a reasonable assertion of authority by a state beyond its borders over foreign residents of sovereign nations has been recognized by this Court and learned authorities to require special attention by courts and a finding of more substantial activity in the forum than when the dispute relates to domestic litigants. See, *United States v. First National Primatine*, (1965) 379 U.S. 378; *Pacific Atlantic Troto v. Maine Express* (9th Cir. 1985) 758 F.2d 1325; Born, *Reflections on Judicial Jurisdiction in International Cases*, 17 Ga. J. Int'l. & Comp. L. 1, 6 (1987). This dual requirement of strict scrutiny and a closer connection between the forum and the foreign defendant in the international assertion of jurisdiction is mandated by special considerations of

federal control over foreign relations and foreign commerce. The opinion of the Court of Appeal admits to no such consideration and, indeed, its conclusion amounts to an unprecedented intrusion into foreign sovereignty.

The general principles by which the states' power to regulate conduct outside its borders is to be determined have been developed by this Court primarily within the context of relations between the domestic states. In this setting, the full Faith and Credit Clause is an important factor in our Constitution, as interpreted by this Court, controlling both ends of the question. This Court has referred to the roots of the domestic standard in our Constitutional history in the historic view that "the nation was to be a common market". *Worldwide Volkswagen Corp. v. Woodson, supra*, 444 U.S. at p. 293. Although such "economic interdependence of the states" may justify a liberal interpretation and application of personal jurisdiction principles where the parties are domestic domicilaries, the existence of such economic realities within the United States does not justify a state's attempt to grasp a foreign national corporation where, as here, that entity has had no contact with the state. There may be a common market within the United States, but there is, as yet, no common market within the world community. To expect Danish and other foreign manufacturers to assume responsibility for compliance with the law of every nation and national subdivision where a product is resold by an independent distributor over which the manufacturer has no control nor input as to the distribution system, is to impose burdens on the manufacturers and their foreign economies which they have not assumed as "sister states . . . in the context of our federal system of government." *Worldwide Volkswagen v. Woodson, supra*, 444 U.S.

at pp. 293-94.

Here, there is no evidence presented that LAURSENS has any contacts with or purposefully availed itself of the benefits and protections of California law. The presence of LAURSENS' machines in California depended on decisions made solely by INTERNATIONAL which unilaterally created and directed its sales strategy, distribution system and advertisements, as well as service facilities to maintain the machines it sold. The "unilateral activity of those who claim some relationship with a non-resident defendant cannot satisfy the requirement of contact with the forms stated." *Worldwide Volkswagen v. Woodson*, *supra*, 444 U.S. at p. 298. This must particularly be true where, as here, INTERNATIONAL, the entity seeking to assert California's jurisdiction based on its own unilateral activity, is itself a non-resident of California.

The only activities in California contained in the record are those undertaken solely by INTERNATIONAL for its own benefit. LAURSENS had no control over or notice as to where INTERNATIONAL would resell the machines in Canada or the United States when INTERNATIONAL purchased the machines in Denmark, but thereafter independently solicited its own business in Canada and the United States. The advertising, sale and service of the machines sold by INTERNATIONAL in Canada and the United States was undertaken, controlled and directed solely by INTERNATIONAL, without any assistance or input from LAURSENS. Petitioner conducts absolutely no business in and has had no communication with any resident of the State of California concerning the machines sold by INTERNATIONAL. These autonomous activities of an independent contractor in California are simply

insufficient, as a matter of Constitutional law, to support a finding of jurisdiction over a foreign national defendant.

B. The Court of Appeal Opinion Directly Conflicts With The *Asahi* Plurality Analysis of "Minimum Contacts."

Justice O'Connor's plurality opinion rejected the argument adopted by the California Court of Appeal in this case that merely placing products in the stream of commerce with knowledge that they may be carried into the forum state is sufficient to confer jurisdiction over a non-resident defendant. ***Asahi***, ***supra***, 107 S.Ct. p.1033. The plurality justices reasoned that the substantial connection required between the defendant and forum state necessitates an act by the defendant "purposefully directed toward the forum state." *Id.* at pp.1032-33. Justice O'Connor concluded that the mere placement of products into the stream of commerce by a non-resident defendant is not an action purposefully directed at a forum state. In order for the defendant's action to be purposefully directed at that forum, "additional conduct" directed at that state would be required. *Id.* at pp.1033.[2]

The conclusion of the Court of Appeal that a "substantial connection between LAURSENS and California" had been established by Real Party In Interest is entirely without foundation. Indeed, contrary

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[2]The plurality opinion stated that "additional conduct" designing the product for the market in the forum state, advertising in the forum state, establishing channels for providing regular advise to customers in the forum state, or marketing the product through a distributor who has agreed to serve as sales agent in the forum state." *Id.* at p. 1034.

to the plurality analysis, the Court of Appeal here clearly determined jurisdiction existed merely because LAURSENS purportedly could or should have foreseen that its product might be sold in California by the South Carolina distributor. The fact that California may be considered a "good market" in which to sell a product has never been considered by this Court to constitute a "minimum contact." LAURSENS in no way purposely availed itself of the privilege of conducting business in California.

In fact, LAURSENS conducted its business activities and arranged its relationship with Real Party In Interest so that it could be assured that it could rely upon the law of Denmark in determining its liability. The reference by the Court of Appeal to the contractual provision obligating each party of the distribution agreement to provide for its own liability insurance also does not address the issue of "minimum contacts." The reference in *Worldwide Volkswagen* to the issue of insurance related to steps a foreign defendant could undertake in the forum state once it has conducted sufficient activity there to subject itself to suit in that state. *Worldwide Volkswagen Corp. v. Woodson, supra*, 444 U.S. at p. 294. This Court has never held that potential coverage for suits afforded by liability insurance carriers either eliminates or limits the requirement that purposeful availment be established before jurisdiction may be asserted; nor did this Court in *Worldwide* hold that liability insurance is an adequate substitute for the protection afforded by the Due Process Clause.

Indeed, this Court has previously cautioned that "the likelihood that a product will find its way into the forum state" is not sufficient to satisfy Due Process. *Worldwide Volkswagen*, 444 U.S. at p. 297. Otherwise, "a local

California tire retailer could be forced to defend in Pennsylvania when a blowout occurs there, . . . [and] [e]very seller of chattels would in effect appoint the chattel his agent for service of process" *Id.* at p. 296. Rather, the foreseeability required for Due Process analysis is that "the defendant's conduct and connection with the forum state are such that he could reasonably anticipate being haled into court there." *Worldwide Volkswgen, supra,* 444 U.S. at p. 297.

In the instant case, no sales or solicitations have ever been made by LAURSENS to California customers. LAURSENS' only contact with the United States at all was the distribution relationship it had with a South Carolina corporation. LAURSENS retained no interest whatsoever in the disposition of the product after selling it "ex-works" to INTERNATIONAL. The distributor expressly was not an agent of LAURSENS and did not act on behalf of LAURSENS in promoting its own sales of products purchased by it from LAURSENS. There simply is a complete absence of any evidence that LAURSENS ever invoked or received the benefits of California law or did anything which reasonably provided notice it would be "haled" into a California court.

C. No Evidence Of "Knowledge" Exists To Support A Finding Of "Minimum Contacts" Under This Court's "Stream of Commerce" Analysis.

Assuming the Court of Appeal had adopted the analysis of Justices Brennan or Stevens of the "Stream of Commerce" approach to purposeful contacts, the record is bereft of evidence to support jurisdiction under that theory. Justice Brennan considered the "additional conduct" requirement of the plurality opinion to be a

retreat from the direction of *Worldwide Volkswagon*. Under his analysis, an assertion of jurisdiction required evidence that the defendant expected the purchase of its products in the forum state once the defendant delivered same into the stream of commerce. In *Asahi*, there was evidence presented of regular California sales of products containing the foreign defendant's components. *Asahi, supra*, 107 S.Ct. at pp.1036-37. Similarly, Justice Stevens emphasized the volume and value of sales in the forum as providing the gauge for purposeful availment. *Id.* at p.1038. Such facts, would apparently be deemed by him to place a defendant on notice of susceptibility to suit in a state where he engages in the requisite quantum of sales of activity.

No evidence was referred to by the Court of Appeal reflecting any awareness by LAURSENS that INTERNATIONAL was making significant re-sales of stripping machines in California. Contrary to the assertion in the appellate opinion, LAURSENS did not create the distribution system utilized by INTERNATIONAL. Rather, it was INTERNATIONAL which created and utilized its own system of marketing, advertising, sales and service. LAURSENS had absolutely no input or control over those activities. INTERNATIONAL never notified LAURSENS of where its sales were taking place in the United States or Canada and it was INTERNATIONAL, not LAURSENS, which made those shipments once sales were consummated. The only evidence referring to LAURSENS which was relied upon by the appellate court in its opinion was the distributorship agreement. Consideration of that agreement itself reveals no reference to anticipated sales in the State of California. It is respectfully submitted that a distributorship agreement, governed by Danish law, providing a license to an independent third party to resell machines

in the United States and Canada cannot, in and of itself, support the assertion of jurisdiction by any particular state in the nation. A contrary conclusion would amount to a determination that the distributorship agreement amounts to a consent of general jurisdiction by the foreign defendant. The provision in the agreement that Danish law would control the relationship of the parties clearly belies any such suggestion. Accordingly, the evidence presented simply does not fulfill the requirements of any recognized theory adopted by this court to analyze the question of purposeful availment.

D. The Opinion Of The Court Of Appeal Fails To Evaluate Whether The Assertion Of Jurisdiction Over LAURSENS Comports With Fair Play And Substantial Justice.

Even if the Court of Appeal had correctly concluded Petitioner did possess the requisite "minimum contacts" with California, several additional considerations must be, and were not addressed. "Once it has been decided that the defendant purposely established minimum contacts within the forum state, these contacts may be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with 'fair play and substantial justice.'[citation]" *Burger King Corp. v. Rudzewicz, suprast al, 471 U.S. at p. 276. If it is established that a defendant purposely has directed its activities at foreign residents, the burden shifts to it to "present a compelling case that the presence of some other considerations would render jurisdiction unreasonable." Supra*, at p. 477.

Although this court in *Asahi* submitted separate opinions with respect to the "minimum contacts" issue, it unanimously reversed the California Supreme Court's assertion of jurisdiction over a foreign national

defendant under factual circumstances analogous to those here present. Here, as in *Asahi*, exercise of jurisdiction by California would "violate traditional notions of fair play and substantial justice". *Id.* at pp. 1033-35. In so ruling, the court weighed the fairness interests discussed in *Worldwide Volkswagen*, modifying its analysis to fit the international context of the case. The court concluded that the severe burden on the foreign manufacturer outweighed the interests of the state and the plaintiff in the exercise of jurisdiction. This court presented four reasons for its conclusion. First, it determined that the Japanese defendant's burden of litigating in California was severe. Second, the court found that the Taiwanese third party plaintiff's interest in the exercise of California jurisdiction was diminished because the plaintiff failed to demonstrate that it was more convenient to litigate its indemnification claim in California than in Japan or Taiwan. Third, the court found the state's interest considerably lessened because the cross-complaint was not a California resident. Finally, the court considered the procedural and substantive interests of other nations affected by the assertion of state court jurisdiction, as well as the federal interest in foreign relations policies. Although this court did not apply these international interests to the facts of the case, it warned that caution and reserve should be exercised in extending jurisdiction across sovereign

boundaries. *Id* at pp. 1034-1035.[3] The opinion of the Court of Appeal in this case admits to no such analysis in reaching its opinion.

The burden, both economically and logistically, which would be imposed upon petitioner to defend this action in California would clearly be substantial. Neither is the availability of insurance proceeds a legitimate substitution for a guarantee of Due Process. Furthermore, California has no interest in adjudicating a dispute between two foreign companies. This dispute between the parties herein will, by agreement, be subject to the law of Denmark. Clearly, the international context of this indemnity claim would require a court "to consider the procedural and substantive policies of other nations whose interests are affected by the assertion of jurisdiction by the California court." *Asahi*, *supra*, 107 S.C. at p. 1034. The plaintiffs in the underlying action, both of whom are California residents, will not be prejudiced, since each action will proceed against defendants who are doing business in California and subject to the jurisdictional reach of that state. By virtue of the extreme burden and inconvenience which would be imposed upon Petitioner through an assertion of

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[3]The factors discussed by this court in its "reasonableness" analysis in *Asahi* are substantially similar to those utilized by the Ninth Circuit when evaluating jurisdiction in both the domestic and international context. The factors considered include: (1) the extent of purposeful interjection; (2) the burden to the defendant; (3) the extent of conflict with sovereignty of the defendant's state; (4) the foreign state's interest in the suit; (5) the efficient judicial resolution of the dispute; (6) the effectiveness of relief for the plaintiff; (7) the existence of an alternate forum. *Sinatra v. National Enquirer, Inc.* (9th Cir., 1988) 854 F.2d 1191, 1198-1201; *Shute v. Carnival Cruise Lines* (9th Cir., 1988) 863 F.2d 1437, 1445-1447; *Federal Deposit Insurance Corp. v. British-American Insurance Co., Ltd.* (9th Cir., 1987) 828 F.2d 1439, 1442.

jurisdiction over it by California in the instant case, as well as the fact that the claims in the consolidated actions do not arise out of any activity by Petitioner in California, it is respectfully submitted that the assertion of jurisdiction by California over the Petitioner in this action is unreasonable and must be reversed.

III.

THE ISSUES HERE PRESENTED ARE IMPORTANT AND SHOULD BE ADDRESSED BY THIS COURT.

It is axiomatic that the exercise of jurisdiction by a state over the citizens of another sovereign has been consistently considered by this Court to be a matter of fundamental Constitutional concern. The "minimum contacts" test established by this Court in *International Shoe Co.* had, as its touchstone, fairness and reasonableness with consideration of the defendant's contact with the forum state. Accordingly, this Court has consistently required some "purposeful availment" by a defendant of the "privilege of conducting activities within the forum state." Purposeful availment has generally been examined from the context of two interrelated inquiries: the extent of contacts and purposefulness of contacts. Divisions now exist in the lower courts in the interpretation of each of these prongs[4] as well as the application of the "stream of commerce"

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[4]See, *Bean Dredging Corp. v. Dredge Technology Corp.* (1984) 744 F.2d 1081 and *Maskinfabrik Seydelmann v. Altman* (1985) 468 So.2d 286.

theory to the purposeful availment test.[5]

The second element of the purposeful availment test has been the subject of a substantial amount of dispute both in this Court (see, *Asahi v. Superior Court, supra*) and in other courts.[6] This difference of opinion is most apparent by considering that courts use different terms to describe the mental state of the defendant required to satisfy the "purposeful" test. These terms include (1) knowledge or awareness of foreign sales, (2) expectation of foreign sales, and (3) deliberate foreign sales. Clearly a deliberate or intended foreign sale requirement demands a higher level of purposeful foreign contact than a requirement of "knowledge" or "expectation" of

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[5] *Bean Dredging Corp. v. Dredge Technology Corp., supra*, 744 F.2d 1081; *Nelson ex rel. Carson v. Park Industries* (7th Cir. 1983) 717 F.2d 1120; *Fedrick v. Daiko Shoji Co.* (Cir. 1983) 715 F.2d 1355; *Poyner v. Erma Werke Gmbh* (6th Cir.) 618 F.2d 1186; *Banton Industries Inc. v. Dimatic Die & Tool Co.* (11th Cir. 1986) 801 F.2d 1283; *Humble v. Toyota Motorcar Co.* (8th Cir. 1984) 727 F.2d 709; *DeJames v. Magnificence Carriers, Inc.* (3rd Cir. 1981) 654 F.2d 280.

[6] *Montalbano v. Easco Hand Tools, Inc.*, (2d Cir. 1985) 766 F.2d 737; *Nelson ex rel. Carson v. Park Indus.*, (7th Cir. 1983) 717 F.2d 1120; *Plant Food Co-op v. Wolfkill Feed & Fertilizer Corp.*, (9th Cir. 1980) 633 F.2d 155; *Oswalt v. Scripto, Inc.*, (5th Cir. 1980) 616 F.2d 191, 198; *Sells v. International Harvester Co.*, (5th Cir. 1975) 513 F.2d 762, 763; *Rockwell Int'l Corp. v. Costruzioni Aeronautiche Giovanni Agusta*, (E.D. Pa. 1982) 553 F. Supp. 328; *DeJames v. Magnificence Carriers, Inc.*, (3d Cir.) 654 F.2d 280; *Stabilisierungsfonds Fur Wein v. Kaiser Stuhl Wine Distrib. Pty. Ltd.*, (D.C. Cir. 1981) 647 F.2d 200; *Cannon v. Tokyu Car Corp.* (E.D. Miss. 1984) 580 F. Supp. 1451; *Humble v. Toyota Motor Co.*, (N.D. Iowa 1982) 578 F. Supp. 530; *United States v. Toyota Motor Corp*, (C.D. Cal. 1983) 561 F. Supp. 354; *Murphy v. Erwin-Wasey, Inc.* (1st Cir. 1972) 460 F.2d 661; *Herman Miller, Inc. v. Mr. Rents, Inc.*, (W.D. Mich. 1982) 545 F. Supp. 1241; See *Max Daetwyler Corp. v. Meyer*, (3d Cir.) 762 F.2d 290; *Hendrickson v. Reg O DCo.*, (3d Cir. 1981) 657 F.2d 9.

foreign sales. In addition, differences presently exist among the courts of this nation concerning the application of "stream of commerce" theory to the personal jurisdiction issues. Substantial questions remain as to whether mere placement of a product in the stream of commerce is sufficient to support jurisdiction, and if so, whether that particular defendant must directly place the product in the stream[7] or whether additional conduct directed to the forum, beyond placing a product in the stream is required[8]

These questions which persist after this Court's Asahi opinion are particularly important in the international context. The issues here presented impact directly upon national interests in international relations and foreign commerce. It is therefore requested that this court revisit the question of personal jurisdiction in the international context in order to provide the lower courts with additional guidelines to assist them in evaluating this complicated and highly volatile area of domestic and foreign concern.

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[7] *R.L. Lipton Distributing Co. v. Dribeck Importers, Inc.*, (6th Cir. 1987) 811 F.2d 967.

[8] *Volkswagenwerk, A.G. v. Klippan GmbH*, (1980) 611 P.2d 498.

CONCLUSION

For the foregoing reasons it is respectfully requested that this Petition for Certiorari be granted. Certification pursuant to Supreme Court Rule 28.2 is being mailed to this court concurrently by separate notarized correspondence of counsel.

Respectfully Submitted,

CHASE, ROTCHFORD, DRUKKER & BOGUST
A Law Corporation
DARRYL A. DE CUIR
CLAY ROBBINS III

Attorneys for Petitioner
E. LAURSENS MASKINFABRIK A/S

APPENDIX

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FIVE

E. LAURSENS MASKINFABRIK A/S	)	B038216
Petitioner.	)	(LASC No.
v.	)	C-557099)
THE SUPERIOR COURT OF	)	
LOS ANGELES COUNTY,	)	
Respondent.	)	
J. W. INTERNATIONAL CORPORATION,	)	
Real Party in Interest.	)	

COURT OF APPEAL - SECOND DIST.
FILED
APR 24 1989
ROBERT N. WILSON Clerk
Deputy Clerk

Petitioner and cross-defendant E. Laursens Maskinfabrik A/S (Laursens) seeks review of an order denying its motion to quash service of summons, brought on the ground that the trial court lacked personal jurisdiction. We denied Laursens' petition for extraordinary relief on November 17, 1988. The matter was transferred to us by the Supreme Court on January 9, 1989, with directions to issue an alternate writ, which issued on January 23. The trial court declined to vacate its order, and we agree that Laursens has sufficient contacts with California to establish personal jurisdiction and affirm the order.

Laursens manufactures products used in the "processing and reclamation of scrap and waste metal material." A South Carolina company, J.W.

International Corporation (J.W.) real party, defendant and cross-complainant, is Laursens' "sole and exclusive" distributor "within the fifty (50) States of the United States of America and Canada." Plaintiff, not a party to this writ petition, was injured when his hand and arm were caught in a cable stripping machine. He filed suit against real party, which filed a cross-complaint for indemnity, apportionment of fault, offset of workers' compensation benefits and declaratory relief against petitioner, the alleged manufacturer of the machine.

Laursens filed a motion to dismiss,[1] relying on *Asahi Metal Industry Co., Ltd. v. Superior Court* (1987) 480 U.S. 102. Laursens argued that because it does not do business in California and does not have minimum contacts with the state, there is no basis for personal jurisdiction. Based on the distributorship agreement between Laursens and J.W., the trial court found it "incredible" that Laursens did not know and intend that its machines would be sold in California, and the motion was denied.

DISCUSSION

California may exercise jurisdiction over nonresidents on any basis not inconsistent with the federal or state Constitutions. (Code Civ. Proc., § 410.10.) Whether the exercise of personal jurisdiction over a nonresident defendant is consistent with due process turns on whether the nonresident defendant has purposefully established minimum contacts with the forum state. (*Asahi Metal Industry Co. Ltd. v. Superior Court, supra,* 480, U.S. at pp. 108-109.) Minimum contacts must have a basis in an "act by which the defendant purposefully avails

[1]By stipulation of the parties and order of the trial court, that motion was deemed a motion to quash service of summons pursuant to Code of Civil Procedure section 418.10.

itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." (*Hanson v. Denckla* (1958) 357 U.S. 235, 253.) With purposeful availment by a corporation of the privilege of conducting activities within the state comes " 'clear notice that it is subject to suit there, and [it] can act to alleviate the risk of burden some litigation by procuring insurance . . . ' " among other things. (*Asahi Metal Industry Co. Ltd. v. Superior Court, supra* , at p. 110, quoting *World-Wide Volkswagen Corp. v. Woodson* (1980) 444 U.S. 286, 297.)

Laursens, while acknowledging that J.W. has sold approximately 30 of its machines in California, maintains that it has never purposefully availed itself of the privilege of conducting activities within the state in that it has no office, employees or agent for receiving subpoenas in California. These facts are not in dispute and do not form the basis for finding jurisdiction. Rather, it is the distributorship agreement that permits California to exercise jurisdiction over Laursens without offending due process, fair play or substantial justice.

Laursens, seeking a place for itself in the American market, entered into a distributorship agreement with J.W. The agreement grants J.W. the "sole and exclusive franchise and distributorship to sell [its] products," and J.W. is prohibited from promoting competitive products. The agreement calls for J.W. to sell the products manufactured by Laursens "within a territory consisting of the fifty (50) States of the United States of America and Canada" and to "use its best efforts in furthering the sales of the products in all states." Thus, the agreement establishes the substantial connection between Laursens and California required by due process. In the language of *Asahi*, the relationship with J.W. shows Laursens' clear "intent or purpose to serve

the market" in the each of the states, including California, by "marketing the product through a distributor who has agreed to serve as a sales agent" in California. (480 U.S. at p. 112.)

The existence of the agreement and the fact that Laursens is the manufacturer of the final product sold by J.W. distinguishes this case from *Asahi* and from *Felix v. Bomoro Kommanditqesellschaft* (1987) 196 Cal.App.3d 106. Both cases involved defendant component part manufacturers that sold products to other companies not located in the United States for assembly into a final product. The courts in those cases found that the component manufacturer may have known that the part would end up in the forum state through the stream of commerce but did nothing to cause that to happen. For that reason, neither defendant was found to have purposefully availed itself of the market in the forum state. The defendant in *Asahi* "did not create . the distribution system that brought its valves to California." (480 U.S. at p.112.) The defendant in *Felix* manufactured parts that were used on Volkswagen cars, and the cars were "sold and distributed by Volkswagen." (196 Cal.App.3d at p. 116.) Laursens, on the other hand, did not simply place its product into the stream of commerce without directing its final destination, but took steps to assure that its product would be sold in all the states, including California.

Further evidence of the purposeful nature of Laursens' activities is the clause in the distributorship agreement that requires both Laursens and J.W. to purchase liability insurance against "any and all *tort* actions" resulting from "activities within the scope" of the agreement. (Emphasis added.) The distributorship agreement covered only sales within the states and Canada. Laursens must have believed that it was subject

to suit in the states for tort liability resulting from sales made through J.W. Awareness that it could be haled into court and the opportunity to protect itself from the risk of burdensome litigation is at the very heart of the due process concerns for nonresident defendants. (See *World-Wide Volkswagen Corp. v. Woodson, supra,* 444 U.S. at p. 297.) Insurance coverage is acknowledged in *World-Wide Volkswagen*as a way in which a corporation can protect itself from the cost of conducting activities within the forum state. Because Laursens anticipated defending itself against tort litigation and took steps to protect itself, the argument that California's exercise of jurisdiction manifestly prejudices Laursens must fail.

Laursens's petition for writ of mandate is denied.

NOT TO BE PUBLISHED.

LUCAS, P. J.

We concur:

ASHBY, J.

BOREN, J.

Los Angeles County Superior Court Case No. C-557099
Eric E. Younger, Judge

Chase, Rotchford, Drukker & Bogust, Darryl A. De Cuir, Clay Robbins, III and Joan E. Hewitt for Petitioner.

No appearance for Respondent.

Breidenbach, Swainston, Crispo & Way and Daniel J. Buckley for Real Party in Interest.

OFFICE OF THE CLERK
COURT OF APPEAL
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
ROBERT N. WILSON, CLERK

DIVISION: 5 DATE: 04/24/89

Choase, Rotchford, Drukker Et Al
Darryl A. De Cuir
700 So. Flower St.
Fifth Floor
Los Angeles, CA. 90017

APR 2 5 1989

RE: Maskinfabrik, E. Laurens
vs.
S.c.l.a.
J.W. International Corporation
2 Civil B038216
Los Angeles No. C557099

ORDER DENYING REVIEW

AFTER JUDGMENT BY THE COURT OF APPEAL
Second Appellate District, Division Five, No. B038216
S008040

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

. . . . . .

E. LAURSENS MASKINFABRIK, Petitioner
v.
LOS ANGELES COUNTY SUPERIOR COURT, Respondent
J.W. INTERNATIONAL CORPORATION Party In Interest

KENNARD, J., DID NOT PARTICIPATE.

. . . . . .

Petition review DENIED.

The stay issued November 30, 1988, is hereby vacated.

LUCAS.

Chief Justice

DEC 3 1989

APPENDIX B

DEPT.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE 10/27/88	JUDGE	M. Hearn	DEPUTY CLERK
HONORABLE Eric E. Younger	JUDGE PRO TEM		
HONORABLE H. Smith, C.A.	Deputy Sheriff	NONE	Reporter
		(Parties and counsel checked if present)	

D557099
Alvarez Ovidio
vs
Browns Salvage & Metal Company

Counsel for Plaintiff

NO APPEARANCES

Counsel for Defendant

NATURE OF PROCEEDINGS.

Ruling on Submitted Matter

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MOTION TO DISMISS FIRST AMENDED CROSS-COMPLAINT FOR LACK OF IN PERSONAM JURISDICTION (ON BEHALF OF SPECIALLY APPEARING CROSS-DEFENDANT, E.LAURSENS MASKINFABRIK A/S)

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After very considerable further research and reflection, the Court DENIES cross-defendant's Motion to Dismiss.

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To the extent that is answers the question presented, Ashai Metal vs. Superior Court (1987) 480 ___, 94 L. Ed. 2d 92, is controlling. There is at least one major

DEPT. 18

MINUTES ENTERED
10/27/88
COUNTY CLERK

substantive distinction between the factual situation in Ashai and the instant case, and that is the presence here of a contractually-created distributorship which virtually guaranteed that the subject machine would be sold (creating a profit for this cross-defendant) in California.

In Asahi, the sales (of the subject valve assemblies) were made by the manufacturer to a tiremaker in Taiwan. While there was evidence in the form of declarations before the court that made it statistically likely that some of the valves would come to California, that is about the most that can be said of the manufacturers "purposeful interection" of its product into commerce in this state. In the instant case, manufacturer of industrial machinery voluntarily entered a contact requiring an American firm to do a number of acts aimed at sales throughout the United States. While reasonable persons could perhaps differ as to the situation if this case arose in a non-manufacturing state, it seems incredible that a party in Laursen's position would not know and intend that California sales would result from its contract with J.W. International, the distributor. Would a manufacturer in such a situation not be entitled to treat failure of the distributor to make California sales as a basis for taking its business elsewhere or even, possibly, as a breach of contract (if lack of effort, for example, could be shown)? This distributorship effort is a key part of the Asahi plurality opinion. 94 L.Ed.2d at 105.

A happenstance factor also slightly impacts this case; we are speaking of a "whole" lawsuit, including Complaint and Cross-Complaints for indemnity; in Asahi, the primary case was settled, leaving the Supreme Court properly to conclude that the forum state had

no "citizen-protection" motivation. That is not true here, and surely Asahi's participation in potential settlement or judgment-payment activity is a benefit to plaintiff if he is otherwise entitled to prevail.

OFFICE OF THE CLERK
COURT OF APPEAL
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
ROBERT N. WILSON, CLERK

DIVISION: 5 DATE: 11/17/88

Choase, Rotchford, Drukker Et Al
Darryl A. De Cuir
700 So. Flower St.
Fifth Floor
Los Angeles, CA. 90017

RECEIVED NOV 18 1988

RE: Maskinfabrik, E. Laurens
VS.
S.c.l.a.
J.W. International Corporation
2 Civil B038216
Los Angeles No. C557099

NOV 17 1988

THE COURT:
The petition for writ of Mandate-Stay is denied.

APPENDIX D

ORDER GRANTING REVIEW

AFTER JUDGMENT BY THE COURT OF APPEAL

Second Appellate District, Division Five, No. B038216, S008040

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

SUPREME COURT
FILED
JAN 5 - 1989
Clerk
DEPUTY

. . . . . .

E. LAURSENS MASKINFABRIKE A/S, Petitioner,

v.

SUPERIOR COURT OF THE COUNTY OF LOS ANGELES, Respondent;

J.W. INTERNATIONAL CORPORATION, Real Party In Interest

. . . . . .

Petition for review GRANTED. The matter is transferred to the Court of Appeal, Second Appellate District, Division Five, with directions to issue an alternative writ to be heard before that court when the proceeding is ordered on calendar.

Pending final determination of this matter, the stay issued on November 30, 1988, shall remain in effect.

LUCAS

.....

Chief Justice

MOSK

.....

Associated Justice

BROUSSARD

.....

Associated Justice

PANELLI

.....

Associated Justice

ARGUELLES

.....

Associated Justice

EAGLESON

.....

Associated Justice

KAUFMAN

.....

Associated Justice

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FIVE

E. LAURSENS MASKINFABRIK A/S, Petitioner. v. SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES, Respondent. J. W. INTERNATIONAL CORPORATION, et al., Real Party in Interest.	No. B038216 (LASC No. C 557099) (Eric E. Younger, Judge)

ALTERNATIVE WRIT OF MANDATE

TO THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES:

The Petition for Writ of Mandate, filed November 7, 1988, having been read and considered, and good cause appearing therefor, you are hereby ordered either to:

(a) Vacate that portion of your order entered October 27, 1988, denying cross defendant's motion to quash service of summons, and enter a new and different order granting the motion, in that matter entitlted *Ovidio Alvarez v. J.W. International Corporation, et al.*, Los Angeles Superior Court Case No. C 557099; or

(b) in the alternative,

SHOW CAUSE before this court in its courtroom at 3580 Wilshire Boulevard, Los Angeles, California 90010,

on March 7, 1989, at 9:00 a.m., why a peremptory writ ordering you to do so should not issue.

The return to the petiton shall be filed on or before Feburary 15, 1989.

If you comply with alternative (a) above, the court requests that you provide it with a copy of your minute order setting forth such compliance.

WITNESS THE HONORABLE CAMPBELL M. LUCAS, Presiding Justice of Divison Five of the Court of Appeal of the State of California, Second Appellate District.

ATTEST my hand and the seal of this court this 19th day of January, 1989.

ROBERT N. WILSON, Clerk

By _____

Deputy Clerk

January 19, 1989

PROOF OF SERVICE BY MAIL

State of California

ss.

County of Los Angeles

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen (18) years and not a party to the within action or proceeding; that my business address is 11333 Iowa Avenue, Los Angeles, California 90025; that on September 11, 1989, I served the within *Petition for Writ of Certiorari to the Court of Appeal, State of California, Second Appellate District, Division Five* in said action or proceeding by depositing true copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as follows:

Clerk, United States
Supreme Court
One First Street, N.W.
Washington, D.C. 20543
(By Express Mail: original and forty copies)

Clerk, California Court
of Appeal
Second Appellate District
Division Five
3580 Wilshire Boulevard
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Superior Court for the
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I declare under penalty of perjury that the foregoing is true and correct. Executed on September 11, 1989, at Los Angeles, California.

Betty J. Malloy
(Original signed)

FILED
OCT 16 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 89-423

In the Supreme Court of the United States

October Term, 1989

E. LAURSENS MASKINFABRIK A/S,

Petitioner,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA AND FOR THE COUNTY OF LOS ANGELES; J. W. INTERNATIONAL CORPORATION (REAL PARTY IN INTEREST),

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION FIVE

RESPONDENT J. W. INTERNATIONAL CORPORATION'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a California court may properly conclude that the exercise of personal jurisdiction over a foreign manufacturer is proper when that manufacturer:

(1) Manufactures the final product which was sold in California and which was the instrumentality causing injury to the plaintiff in the underlying case, and

(2) Acknowledges that approximately 30 of the subject machines were sold in California pursuant to a written agreement which:

(a) Grants the sole and exclusive franchise and distributorship to sell the manufacturer's products within a territory which includes California to a South Carolina corporation,

(b) Compels the South Carolina distributor to use its best efforts in furthering the sales of the manufacturer's products within the territory which includes California, and

(c) Requires both the manufacturer and the distributor to purchase liability insurance against any and all tort actions resulting from activities within the scope of the written agreement.

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No. _____

In the Supreme Court of the United States

October Term, 1989

E. LAURSENS MASKINFABRIK A/S,

Petitioner,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
AND FOR THE COUNTY OF LOS ANGELES;
J. W. INTERNATIONAL CORPORATION
(REAL PARTY IN INTEREST),

Respondents.

RESPONDENT J. W. INTERNATIONAL CORPORATION'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

J. W. INTERNATIONAL CORPORATION (hereinafter referred to as "INTERNATIONAL"), Respondent herein, respectfully requests that the United States Supreme Court deny the Petition brought by E. LAURSENS MASKINFABRIK A/S (hereinafter referred to as "LAURSENS") seeking a Writ of Certiorari to review the decision of the California Court of Appeal, Second Appellate District, Division Five, entered in this case on April 24, 1989 (review thereof having been denied by the

Supreme Court of California by its order of June 29, 1989).

STATEMENT OF THE CASE

The action at issue herein is a suit for indemnity brought by INTERNATIONAL against LAURSENS. LAURSENS is the manufacturer of an allegedly defective cable-stripping machine which is claimed to have caused personal injuries to Olvidio Alvarez, plaintiff in the underlying case. LAURSENS sold the allegedly defective cable-stripping machine to INTERNATIONAL which sold the machine in California pursuant to the terms of a written distributorship agreement executed by and between LAURSENS and INTERNATIONAL.

On July 18, 1985, Olvidio Alvarez filed his Complaint seeking damages for these injuries. On April 22, 1986, a separate action was filed on behalf of the worker's compensation carrier for Mr. Alvarez's employer which sought recovery of the benefits paid to Mr. Alvarez to compensate him for his injuries. LAURSENS was not served in the worker's compensation action. However, on July 16, 1986, INTERNATIONAL filed and served its Answer to the Complaint filed by Mr. Alvarez and concurrently filed its Cross-Complaint. LAURSENS is named as a cross-defendant in that Cross-Complaint and was properly served with Summons and Cross-Complaint in accordance with the provisions of the Hague Convention on the Service of Process on August 20, 1986.

On September 28, 1988, LAURSENS filed its Notice of Special Appearance and Motion to Dismiss for Lack of Personal Jurisdiction. INTERNATIONAL filed its Opposition to said Motion. LAURSENS' Motion was heard on October 24, 1988, in Los Angeles County

Superior Court before the Honorable Eric E. Younger. After considerable deliberation upon the matter, including further research of the issues presented, Judge Younger found it "incredible" that LAURSENS did not know and intend that California sales result from its contract with INTERNATIONAL and accordingly denied LAURSENS' Motion to Dismiss.

On November 7, 1988, LAURSENS filed a Petition in the Second District Court of Appeal seeking extraordinary relief from the denial of its Motion. The Second District Court of Appeal denied LAURSENS' Petition on November 17, 1988.

Thereafter, LAURSENS sought review in the Supreme Court of the State of California. The California Supreme Court granted LAURSENS' Petition for Review and transferred the matter to the Court of Appeal with directions that the Court issue an alternative writ to be heard before that court when the proceeding was ordered on calendar.

Oral argument was heard by Division Five of the Court of Appeal on March 7, 1989. The Court of Appeal filed its opinion on April 24, 1989 in which it affirmed the order of the Superior Court denying LAURSENS' Motion to Quash. The Court of Appeal based its holding upon its findings that LAURSENS' "took steps to assure that its product would be sold in all the states, including California" and that the argument that LAURSENS would be prejudiced by California's exercise of jurisdiction over it was without merit.

LAURSENS filed a Petition for Review of this opinion in the California Supreme Court on May 25, 1989. The Supreme Court of the State of California denied the Petition for Review on June 29, 1989.

REASONS FOR DENYING THE WRIT

U. S. Supreme Court Rule 17 sets forth the considerations governing review on writ of certiorari. In pertinent part, Rule 17 states:

> "A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor."

U. S. Supreme Court Rule 17.1, 28 U.S.C.A.; *see also, Rice v. Sioux City Memorial Park Cemetery* (1955) 349 U.S. 70, 73-74, 75 S.Ct. 614, 99 L.Ed. 897 (applying the rule that "special and important reasons" are required for the grant of a writ of certiorari).

LAURSENS' Petition for Writ of Certiorari fails to set forth the requisite "special and important reasons" for granting its Petition; therefore, the Petition for Writ of Certiorari should be denied.

I.

The Ruling Of The Respondent Court Is In Accord With The Principles Enunciated In The Published Opinions Of Other Courts.

LAURSENS contends that the opinion of the Court of Appeal which affirms the ruling of the Superior Court of the State of California in and for the County of Los Angeles (which denied LAURSENS' Motion to Dismiss) is contrary to case law. However, quite the opposite is true: the ruling of the Respondent Court denying LAURSENS' Motion to Dismiss is based upon well-established principles of in personam jurisdiction. Similarily, the opinion of the Court of Appeal which affirms the Respondent Court's ruling is in accord with the principles of in personam jurisdiction set forth by

this Court and California law.

A. California *Code of Civil Procedure* Section 410.10 confers broad power on California courts to exercise in personam jurisdiction.

California *Code of Civil Procedure* Section 410.10 confers power on California courts to exercise in personam jurisdiction over non-resident defendants "on any basis not inconsistent with the Constitution of this state or of the United States." California *Code of Civil Procedure* Section 410.10. It is well-settled that California *Code of Civil Procedure* Section 410.10 manifests a legislative intent to "exercise the broadest possible jurisdiction, limited only by constitutional considerations." *Felix v. Bomoro Kommanditgesellschaft* (1987) 196 Cal.App.3d 106, 111, 241 Cal.Rptr. 670 (citing *Sibley v. Superior Court* (1976) 16 Cal.3d 442, 445, 128, Cal.Rptr. 34 and others).

B. Laursens has established sufficient minimum contacts with California to permit the exercise of in personam jurisdiction over it.

Due process requires that non-residents not be haled into local courts solely as the result of "random, fortuitous or attentuated" contacts over which they have no control. *Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 476, 85 L.Ed.2d 528. The proper exercise of jurisdiction over a non-resident requires that the non-resident's conduct and connection with the forum state be such that it "should reasonably anticipate being hailed into court there." *World-Wide Volkswagen Corp. v. Woodson* (1980) 444 U.S. 286, 297, 62 L.Ed.2d 490. When a non-resident purposefully directs its activities at forum residents or purposefully avails itself of the privilege of conducting activities within the forum state,

thus invoking the benefits and protection of the forum state's laws, constitutional due process requirements are satisfied. *Hanson v. Denckla* (1958) 357 U.S. 235, 2 L.Ed.2d 1283; *see also, Sibley, supra,* 16 Cal.3d 442, 128, Cal.Rptr. 34.

Thus, in the instant case, if the Respondent Court found that LAURSENS purposefully interjected its products into the forum state, it may properly exercise in personam jurisdiction over LAURSENS for all claims which would not have arisen but for LAURSENS' conduct. *See, Security Pacific National Bank & American International Group v. Derderian & Jocovic* (9th Cir. 1989) 872 F.2d 281.

In its Motion to Dismiss First Amended Cross-Complaint, LAURSENS relied upon the language of a four-justice plurality opinion in *Asahi Metal Industry v. Superior Court* (1987) 480 U.S. 102, 94 L.Ed.2d 92, to advance its argument that the Respondent Court could not assert in personam jurisdiction over it. Respondent Court cited *Asahi* as the controlling authority but found that the facts of the instant case were distinguishable from those in *Asahi.*

In setting forth these factual distinctions, Respondent Court noted:

> "There is at least one major substantive distinction between the factual situation in *Asahi* and the instant case, and that is the presence here of a contractually-created distributorship which virtually guaranteed that the subject machine would be sold (creating a profit for this cross-defendant) in California.
>
> In *Asahi*, the sales (of the subject valve assemblies) were made by the manufacturer to

> a tire maker in Taiwan. While there was evidence in the form of declarations before the court that made it statistically likely that some of the valves would come to California, that is about the most that can be said about the manufacturers 'purposeful interjection' of its product into commerce in this state. In the instant case, manufacturer of industrial machinery voluntarily entered into a contract requiring an American firm to do a number of acts aimed at sales throughout the United States. While reasonable persons could perhaps differ as to this situation if this case arose in a non-manufacturing state, it seems incredible that a party in [LAURSENS'] position would not know and intend that California sales would result from its contract with [INTERNATIONAL], the distributor."

Ruling on submitted matter at C2 (included in LAURSENS' Petition for Writ of Certiorari as Appendix C).

Additionally, Respondent Court pointed out that California has a "citizen-protection" motivation in the instant case which was not present in *Asahi*. Respondent Court stated:

> "A happenstance factor also slightly impacts this case; we are speaking of a 'whole' lawsuit, including Complaint and Cross-Complaints for indemnity; in *Asahi*, the primary case was settled, leaving the Supreme Court properly to conclude that the forum state had no 'citizen-protection' motivation. That is not true here, and surely [LAURSENS'] participation in potential settlement or judgment-payment

> activity is a benefit to plaintiff if he is otherwise entitled to prevail."

Ruling on Submitted Matter at C2-C3.

Similarly, the Second District Court of Appeal pointed out the fallacy of LAURSENS' reliance upon *Asahi*. In its opinion filed in this action on April 24, 1989, the Court of Appeal stated:

> "The existence of the [Distributorship Agreement] and of the fact that [LAURSENS] is the manufacturer of the final product sold by [INTERNATIONAL] distinguishes this case from *Asahi* and from *Felix v. Bomoro Kommanditgesellschaft* (1987) 196 Cal.App.2d 106. Both cases involved defendant component part manufacturers that sold products to other companies not located in the United States for assembly into a final product. The courts in those cases found that the component manufacturer may have known that the part would end up in the forum state through the stream of commerce but did nothing to cause that to happen. For that reason, neither defendant was found to have purposefully availed itself of the market in the forum state. The defendant in *Asahi* 'did not create . . . the distribution system that brought its valves to California.' (480 U.S. at p. 112.) The defendant in *Felix* manufactured parts that were used on Volkswagen cars, and the cars were 'sold and distributed by Volkswagen.' (196 Cal.App.3d at p. 116.) [LAURSENS] on the other hand, did not simply place its product into the stream of commerce without directing its final destination, but *took steps to assure that its*

> *product would be sold in all the states, including California.*"

Opinion of the Court of Appeal at A4 (included in LAURSENS' Petition for Writ of Certiorari as Appendix A) (emphasis added).

The plurality opinion in *Asahi* stated that "[t]he placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum state. Additional conduct of the defendant may [be required to] indicate an *intent or purpose* to serve the market in the forum state . . ." *Asahi, supra,* 480 U.S. at 112, 94 L.Ed.2d at 104 (emphasis added). Although the *Asahi* plurality listed examples of such "additional conduct" which were not present in the *Asahi* case, "these examples [were] by no means exhaustive of the ways in which a plaintiff may establish minimum contacts . . . ." *Felix, supra,* 196 Cal.App.3d at 116.

"No bright line may be drawn between instances in which there are sufficient contacts between the forum and the non-resident defendant and those in which there are not." *Felix, supra,* 196 Cal.App.3d at 116. The court must instead look to any conduct intending to show a "purposeful interjection" into the forum state. *Id.*

In the instant case, the Respondent Court and the Court of Appeal found such a "purposeful interjection" of LAURSENS' products into the state. Respondent Court had in evidence before it the Distributorship Agreement executed by and between LAURSENS and INTERNATIONAL dated March 21, 1983 (attached to the Memorandum of Points and Authorities in Opposition to Cross-Defendant's Motion to Dismiss First Amended Cross-Complaint as "Exhibit A"; *Olividio Alvarez v. J. W. International Corp.*, Orange

County Superior Court Civil No. C 557099) which granted the "*sole and exclusive* franchise and distributorship to sell [its] products . . . within a territory consisting of the fifty (50) states of the United States of America and Canada . . ." Distributorship Agreement at Paragraph 1 (emphasis added). It was uncontested that substantial sales of products manufactured by LAURSENS were made in California under this Distributorship Agreement. *See,* Opinion of the Court of Appeal at A3 (taking note of the fact that approximately 30 of LAURSENS' cable-stripping machines have been sold in California).

In examining the Distributorship Agreement, Respondent Court concluded that the "contractually-created distributorship . . . virtually guaranteed that the subject machine would be sold (creating a profit for [LAURSENS]) in California." Ruling on Submitted Matter at C2. Moreover, Respondent Court found that the terms of the Distributorship Agreement and the nature of the parties to its gave rise to a finding that LAURSENS *knew and intended* that California sales would result. Ruling on Submitted Matter at C2; *see also,* Opinion of the Court of Appeal at A4 (LAURSENS "did not simply place its product into the stream of commerce without directing its final destination, but took steps to assure that its product would be sold in all the states, including California"). Despite the recitation in Paragraph 12 of the Distributorship Agreement that the manufacturer and distributor are "independent actors," LAURSENS effectively served the California market through the contractual arrangement.

Paragraph 9 of the Distributorship Agreement requires INTERNATIONAL to use its "best efforts" to further sales of LAURSENS' products and to maintain

standards of operation and service. Paragraph 2 of the Distributorship Agreement dictates that INTERNATIONAL must maintain a workshop and service organization, including the maintenance of an inventory of stock. Paragraph 3 of the Distributorship Agreement mandates that the prices charged by INTERNATIONAL upon resale must be compatible with the prices charged by the manufacturer. Paragraph 4 prohibits INTERNATIONAL from promoting competitive products, conditions the transferral of rights or duties under the contract to third parties upon written approval by the manufacturer, and limits INTERNATIONAL to acquiring certain spare parts from LAURSENS.

Such contractual terms and the conduct which results from compliance with those terms clearly permit Respondent Court and the Court of Appeal to properly find that LAURSENS intentionally serves the market for its products in California. This sound factual basis permitted the Court of Appeal to conclude:

> "In the language of *Asahi*, their relationship with [INTERNATIONAL] shows [LAURSENS'] clear 'intent or purpose to serve the market' in each of the states, including California, by 'marketing the product through a distributor who has agreed to serve as a sales agent' in California."

Opinion of the Court of Appeal at A3-A4 (quoting *Asahi, supra*, 480 U.S. at 112.)

Furthermore, the concurring opinion *Asahi* supports the exercise of in personam jurisdiction over LAURSENS in the instant case. Justice Brennan, with whom Justice White, Justice Marshall and Justice Blackmun joined, stated:

> " The stream of commerce refers not to unpredictable currents or eddies, but to the regular and anticipated flow of products from manufacturer to distribution to retail sales. As long as a participant in this process is aware that the final product is being marketed in the forum state, the possibility of a lawsuit there cannot come as a surprise. Nor will the litigation present a burden for which there is no corresponding benefit. A defendant who has placed his goods in the stream of commerce benefits economically from the retail sale of the final product in the forum state, and indirectly benefits from the state's laws that regulate and facilitate commercial activity. These benefits accrue regardless of whether that participant directly conducts business in the forum state or engages in additional conduct directed toward that state."

Asahi, supra, 480 U.S. at 107, 94 L.Ed.2d at 107.

Hence, Respondent Court's finding of sufficient minimum contacts to exercise in personam jurisdiction and the Court of Appeal's affirmance of that finding is supported by the opinions of all eight justices who decided *Asahi.*

C. The exercise of in personam jurisdiction over Laursens does not offend traditional notions of fair play and substantial justice.

The strictures of the Due Process Clause forbid a state court from exercising in personam jurisdiction over a non-resident defendant under circumstances that would offend "traditional notions of fair play and substantial justice." *Asahi, supra,* 480 U.S. at 113, 94 L.Ed.2d at

105; *Milliken v. Meyer* (1940) 311 U.S. 457, 463, 85 L.Ed. 278. In *Asahi*, this Court explained:

> "[T]he determination of the reasonableness of the exercise of jurisdiction in each case will depend on an evaluation of several factors. A court must consider the burden on the defendant, the interest of the forum state, and the plaintiff's interest in obtaining relief. It must also weigh in its determination 'the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several states in furthering fundamental substantive social policies.' "

Asahi, supra, 480 U.S. at 113, 94 L.Ed.2d at p. 105 (quoting *World-Wide Volkswagen, supra,* 444 U.S. at 292).

In the instant case, Respondent Court weighed the various interests and properly concluded that traditional notions of fair play and substantial justice would not be offended by California's exercise of in personam jurisdiction over LAURSENS.

The burden shouldered by LAURSENS in defending the instant case in a California court would not be great. When a manufacturer purposefully avails itself of the privilege of indirectly conducting activities within the forum state, "it has clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs onto customers, or, if the risks are too great, severing its connection with the state." *World-Wide Volkswagen, supra,* 444 U.S. at p. 297.

It is clear that LAURSENS had notice that it might be haled into a California court. As the Respondent

Court found that LAURSENS purposefully conducted activities within California, LAURSENS was on constructive notice that it was subject to suit there. *See*, Opinion of the Court of Appeal at A4 (LAURSENS "took steps to assure that its product would be sold in all the states, including California"). In fact, LAURSENS had actual notice of a suit pending in Orange County Superior Court regarding one of its cable-stripping machines. *See*, Memorandum of Points and Authorities in Opposition to Cross-Defendant's Motion to Dismiss First Amended Cross-Complaint at 12, fn. 1.

LAURSENS' burden is further lessened by provisions of the Distributorship Agreement. Consistent with the rationale of *World-Wide Volkswagen*, Paragraph 8 of the Distributorship Agreement sets forth provisions for the purchase of liability insurance against "any and all tort actions" resulting from "activities within the scope" of the Distributorship Agreement. Thus, "[b]ecause [LAURSENS] anticipated defending itself against tort litigation and took steps to protect itself, the argument that California's exercise of jurisdiction manifestly prejudices [LAURSENS] must fail." Opinion of the Court of Appeal at A5. Moreover, as the Distributorship Agreement stipulates in Paragraph 15 that it is to be governed by Danish law, LAURSENS will not be prejudiced by submitting to the judicial system of California. Hence, unlike the manufacturer in *Asahi*, LAURSENS cannot complain of undue burden in litigating the instant case in California.

On the other hand, the interests of INTERNATIONAL and California are strong. The policy of judicial economy weighs heavily in favor of adjudicating the indemnity issues concurrently with the issues of liability. To force INTERNATIONAL to litigate the indemnity issues

separately and in a different forum would entail undue expense and burden.

Furthermore, California's interest in protecting its consumers through the economic deterrance of the manufacture of defective products inherent in the payment of damages would not be served as effectively by a piecemeal disposition of the issues rather than the full resolution of all issues involved in the instant case. In its Ruling on Submitted Matter, Respondent Court noted:

> "A happenstance factor also slightly impacts this case; we are speaking of a 'whole' lawsuit, including Complaint and Cross-Complaints for indemnity; in *Asahi*, the primary case was settled, leaving the Supreme Court properly to conclude that the forum state had no 'citizen-protection' motivation. That is not true here, and surely LAURSENS' participation in potential settlement or judgment payment activity is a benefit to plaintiff if he is otherwise entitled to prevail."

Ruling on Submitted Matter at C2-C3.

Thus, Respondent Court and the Court of Appeal had an ample factual basis for finding that due process considerations were satisfied.

II.

The Instant Case Presents No Important Questions Of Law Which Should Be Addressed By This Court.

LAURSENS contends that important issues are raised in the instant case which should be addressed by this Court. Specifically, LAURSENS asks this Court to clarify ambiguities that LAURSENS perceives in the standards for addressing in personam jurisdiction. However,

LAURSENS' contention is without merit.

The instant case simply does not present any question as to the propriety of the exercise of in personam jurisdiction. As set forth in the preceding section, Respondent Court and the Court of Appeal had ample factual foundation upon which to base their findings that due process is not offended by the exercise of in personam jurisdiction over LAURSENS. Hence, the divisions of analysis which LAURSENS contends exist in the lower courts do not affect the outcome of the instant case: under *any* formulation of the standards for the proper assertion of in personam jurisdiction, Respondent Court and the Court of Appeal found that the exercise of in personam jurisdiction over LAURSENS comports with due process.

CONCLUSION

For the foregoing reasons, it is respectfully requested that LAURSENS' Petition for Writ of Certiorari be denied.

Respectfully submitted,

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PROOF OF SERVICE BY MAIL

State of California

ss.

County of Los Angeles

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen (18) years and not a party to the within action or proceeding; that my business address is 11333 Iowa Avenue, Los Angeles, California 90025; that on October 12, 1989, I served the within *Respondent J. W. International Corporation's Brief in Opposition to Petition for Writ of Certiorari* in said action or proceeding by depositing true copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as follows:

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I declare under penalty of perjury that the foregoing is true and correct. Executed on October 12, 1989, at Los Angeles, California.

Betty J. Malloy
(Original signed)